IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1312 OF 2007.

Santosh Anantrao Vanakudre ... Petitioner.
Versus.
Raghunandan Prabhakar Vanakudre & ors.... Respondents.

Shri Mandar V.Limaye for the Petitioner.

CORAM : ABHAY S.OKA, J.

DATED : 28th February, 2007.

P.C.:

1. The Petitioner is the original Defendant. The Petitioner has suffered a decree for possession in respect of a premises which are admittedly used for commercial purposes. The decree for possession passed against the Petitioner in the civil suit has been challenged by the Petitioner by preferring an Appeal before the District Court. As a condition for grant of stay of the decree for possession, the learned District Judge has directed the Petitioner to deposit costs of the suit as per the decree and security in the sum of Rs.50,000/- on or before today.

2. The learned Advocate for the Petitioner submitted that the District Court could not have imposed such a condition for grant of stay inasmuch as there is no money decree passed against the Petitioner.

3. I have considered the submissions. A perusal of

the impugned Judgment of the trial Court shows that the defence raised by the Petitioner was that he had become owner of the suit shop by adverse possession. However, the plea of adverse possession has not been established by the Petitioner. There is a decree passed for possession along with a direction to hold an enquiry for determination of the mesne profits. Considering the aforesaid facts, no fault can be found with the approach of the learned District Judge in imposing condition as regards furnishing security in the sum of Rs.50,000/-. There is no failure of justice. No case for interference is made out. Petition is rejected.

4. Time to furnish security in the sum of Rs.50,000/- is extended by a period of three weeks from today.

5. It is obvious that the observations made in this order are for the limited purpose of considering the legality and validity of the impugned order.

Judge.